

ESTTA Tracking number: **ESTTA559940**

Filing date: **09/17/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212176
Party	Defendant Kevco Intellectual Properties LLC
Correspondence Address	Richard L. Hill Durham Jones & Pinegar, P.C. 4844 North 300 West, Suite 300 Provo, UT 84604-5670 ipmail@djplaw.com;ewynn@djplaw.com
Submission	Answer
Filer's Name	Richard L. Hill
Filer's e-mail	trademarks@hjslaw.com
Signature	/Richard L. Hill/
Date	09/17/2013
Attachments	Answer to Opp. Cardillo BADDASS NUTRITION c. 44 09Sept13.pdf(4582471 bytes)

1. Applicant is without knowledge or information of the allegations of Paragraph 1 regarding Opposer's company and therefore denies the same.
2. Applicant is without knowledge or information of the allegations of Paragraph 2 regarding Opposer's trademark use and therefore denies the same. Applicant is aware of the existence of the trademark registration allegedly owned by Cardillo (“Opposer’s Registration”) with respect to services in international class 35, but Applicant is without knowledge as to the ownership thereof and therefore denies the same. Applicant did not receive the stated printout of information.
3. Applicant is without knowledge of Cardillo’s trademark usage, and therefore denies the same. Applicant admits that it filed a trademark application with respect to services in international class 44, as recited in Paragraph 3.
4. Applicant denies the allegations of Paragraph 4.
5. Applicant is without knowledge or information of the allegations of Paragraph 5 regarding Opposer's trademark rights and therefore denies the same.
6. Applicant denies the allegations of Paragraph 6.
7. Applicant denies the allegations of Paragraph 7.

8. Applicant admits that a registration based on Applicant's Application would provide a prima facie exclusive right to use the BADDASS mark with respect to the goods recited in such registration. Otherwise, Applicant denies the allegations of Paragraph 8.

AFFIRMATIVE DEFENSES

9. There is no likelihood of confusion, mistake or deception because *inter alia*, Applicant's mark BADDASS NUTRITION in Applicant's Application with the services in international class 44 described in Applicant's Application is not confusingly similar with Opposer's mark BADA\$\$\$SUPPLEMENTS.COM in Opposer's Registration with the services in international class 35 described in Opposer's Registration.

10. Opposer has admitted that there is no likelihood of confusion between Applicant's trademark BADDASS NUTRITION used with its services and Opposer's alleged common-law trademark BADASSSUPPLEMENTS.COM ("Opposer's Common-law Mark") with its services, because Opposer is selling Applicant's dietary supplement goods, all bearing the Applicant's trademark BADDASS, on Opposer's website www.badasssupplements.com, next to Opposer's alleged Common-law Mark, as shown in the attached Exhibit A.


11. Opposer has admitted that there is no likelihood of confusion between Applicant's trademark BADDASS NUTRITION used with its services and Opposer's alleged common-law trademark BADASSSUPPLEMENTS.COM and registered trademark BADA\$\$\$SUPPLEMENTS.COM used with their services, because Opposer did not oppose the Applicant's trademark registrations for BADDASS NUTRITION (Reg. No. 4,219,260) and YOU ARE BADDASS (Reg. No. 4,253,136), both registered in international class 5 for dietary and nutritional supplements, as shown in the attached Exhibit B.

12. Opposer's registered trademark BADA\$\$SUPPLEMENTS.COM in Opposer's Registration has narrow and limited rights with respect to its services in international class 35, because it uses the \$\$ symbol, rather than the letters SS in the mark and because its services to not extend to international class 44.

13. Opposer has abandoned its registered trademark BADA\$\$SUPPLEMENTS.COM.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board deny Opposer's prayer to prohibit registration of the cited trademark application, U.S. Trademark Application Serial No. 85/676823, and Applicant requests that the Trademark Trial and Appeal Board allow said trademark application to proceed to registration.

KEVCO INTELLECTUAL PROPERTIES LLC

By: 
Richard L. Hill, Attorney for Applicant
Durham Jones & Pinegar
4844 North 300 West, Suite 300
Provo, Utah 84604
801-375-6600

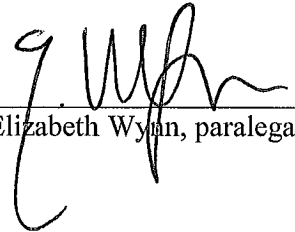
Date 9/17/13.

CERTIFICATE OF SUBMISSION AND SERVICE

I hereby certify that the foregoing Answer to the Notice of Opposition, with Exhibits A and B attached, is being submitted to the Trademark Trial and Appeal Board via online submission on the following date:

9/17/13

I hereby certify that a copy of the foregoing Answer to the Notice of Opposition was sent to counsel for the Opposer via U.S. Postal Service for First Class Mail delivery, on the following date: 9/17/13 addressed to: Cheryl A. Clarkin, Barlow, Josephs & Holmes, Ltd., 101 Dyer St. 5th floor, Providence, RI, 02903

Signature: 
Elizabeth Wynn, paralegal

ANSWER

Exhibit A

Opposition No. 91212176

BADASS SUPPLEMENTS.COM

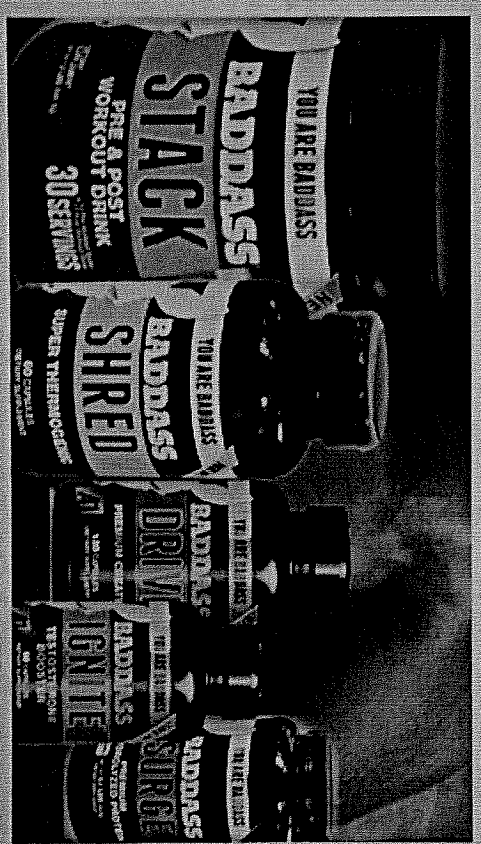
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- Cleansing and Detoxification
- Coenzyme Q10 (CoQ-10)
- Creatine

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Featured Product



CytoSport Muscle Milk Pudding 24pk

Popular Products

1. Muscletech Nitro-Tech Hardcore 4lb
2. BSN Fit Stack Elite (Syntha-6, NO-Xplode, Thermorex, Cheaters Relief, Nitrx 180tabs)
3. AMERICAN CELLULAR LABS TREN EXTREME 90caps
4. BSN Elite Mass Stack (True

<https://www.baddasssupplements.com/index.php?PHPSESSID=4f1c5e98d5b27a50bd2abf0ac0bd2cbb>

Baddass Nutrition

Account Home and Log

Cart Comparison Cart

- Featured Products

- New products

- Starter kits

- Promotions

Allergy Support

Alpha Lipoic Acid (ALA)

Amino Acids

Anti-Estrogen / PCT

Antioxidants

BCAAs

Books

Carb Blockers / Appetite Control

CLA (Conjugated Linoleic Acid)

Cleansing and Detoxification

Coenzyme Q10 (CoQ-10)

Creatine

Diabetes Support

DHEA

Digestive Aids

Diuretics

Endurance and Recovery

Energy

Energy (Pre-Workout)

Epilepsy Products

Estrogen Blockers

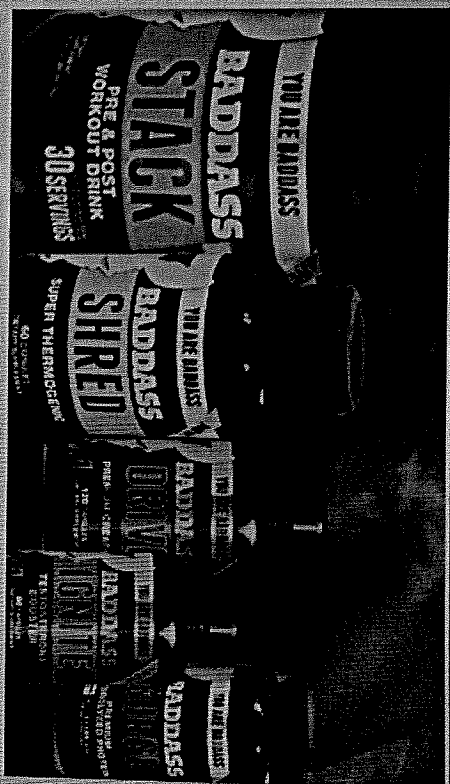
Eye Support

Fat Calipers / Body Tape Measure

Fatty Acids and Essential Oils

Glutathione

Heart Support



Latest Products



Baddass Nutrition - Stack
The...

\$28.99

Info

Add to basket



Baddass Nutrition - Burn
Super...

\$28.99

Info

Add to basket



Baddass Nutrition - Shred

\$28.99

Info

Add to basket

Featured Product



CytoSport Musclic Milk Pudding 24pk

Popular Products

1. Muscletech Nitro-Tech Hardcore 4lb
2. BSN FitStack Elite (Syntra-6, NO-Xplode, Thermomex, Cheaters Relief, Nitrx 180lbs)
3. AMERICAN CELLULAR LABS TREN EXTREME 90caps
4. BSN Elite Mass Stack (True-Mass, NO-Xplode, Cellmass, Nitrx 180lbs)
5. Gaspar Nutrition (ORIGINAL) Halodrol-50 30tablets
6. XXL Nutrition PGT2 STRONGEST Prohormone 90caps
7. Gaspar Nutrition Ultimate Anabolic Stack (Superpump 250, Sizeon 2, B4b, Novedex XT)
8. Muscletech Cell-Tech Hardcore 6.7lb
9. BSN Nitro-NO-Xplode Combo (1 X Nitrx 180lbs, 1 X NO-Xplode)
10. FREE 30 Packs of Pre & Post

- Books
- Carb Blockers / Appetite Control
- CLA (Conjugated Linoleic Acid)
- Cleansing and Detoxification
- Coenzyme Q10 (CoQ-10)
- Creatine
- Diabetes Support
- DHEA
- Digestive Aids
- Diuretics
- Endurance and Recovery
- Energy
- Energy (Pre-Workout)
- Ephedra Products
- Estrogen Blockers
- Eye Support
- Fat Calipers / Body Tape Measure
- Fatty Acids and Essential Oils
- Glutamine
- Heart Support
- Herbs
- HGH (Human Growth Hormone)
- HMB
- Immune System Support
- Insulin Support
- Joint Support
- Liver Support
- Low Carb Products
- Meal Replacements (MRP)
- Mental Focus and Memory /

Latest Products



Baddass Nutrition - Stack
The...

\$28.99

Info

Add to basket



Baddass Nutrition - Burn
Super...

\$28.99

Info

Add to basket



Baddass Nutrition - Shred...

\$28.99

Info

Add to basket

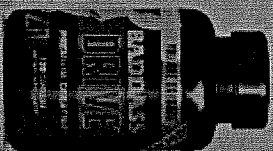


Baddass Nutrition - Surge...

\$33.99

Info

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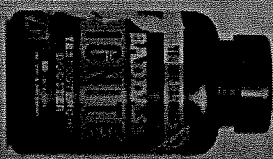


Baddass Drive 120
Capsules...

\$19.99

Info

Add to basket



Baddass Ignite 60 Capsules

\$33.99

Info

Add to basket

- BSN Fit Stack Elite (Synth NO-Xplode, Thermogen, Cheaters Relief, Nitrix 180)
- AMERICAN CELLULAR TREN EXTREME 90caps

- BSN Elite Mass Stack (True Mass, NO-Xplode, Cellnet Nitrix 180caps)

- Gaspari Nutrition (ORIGINAL) Halodrol-50 30tablets

- XXL Nutrition PGTZ STRONGEST Phenomone 60caps

- Gaspari Nutrition Ultimate Anabolic Stack (Superpump Sizeon 2.84lb, Novedex XT

- MuscleTech Cell-Tech Hard 6.7lb

- BSN NitrixNO-Xplode Com X Nitrix 160caps, 1 X NO-XP

- FREE 30 Packs of Pre & Post Workout Samples

- NVE ORIGINAL Stack 2 (25 mg EPHEDERA) 100caps

- Gaspari Nutrition Novedex X 60caps

- TREN TRIPLE STACK (1 X Nitrix, 1 X Oxiendrol, 1 X M Thistle)

- Maximus Labs SUPREMACY Caps

ANSWER

Exhibit B

Opposition No. 91212176



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YOU ARE BADDASS

Word Mark	YOU ARE BADDASS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; dietary and nutritional supplements for sports nutrition and for endurance and athletic sports, dietary and nutrition supplements for weight management; dietary and nutritional supplements including protein, creatine, glycerol, folic acid, carbohydrates, vitamins, minerals, amino acids, and/or testosterone. FIRST USE: 20120301. FIRST USE IN COMMERCE: 20120301
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85572015
Filing Date	March 16, 2012
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 18, 2012
Registration Number	4253136
Registration Date	December 4, 2012
Owner	(REGISTRANT) Kevco Intellectual Properties LLC LIMITED LIABILITY COMPANY UTAH 14513 S.

Centerpoint Way, Suite 200 Bluffdale UTAH 84065
Attorney of Record Richard L. Hill
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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BADDASS NUTRITION

Word Mark	BADDASS NUTRITION
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; dietary and nutritional supplements for sports nutrition and for endurance and athletic sports; dietary and nutritional supplements for weight management. FIRST USE: 20120215. FIRST USE IN COMMERCE: 20120215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85416635
Filing Date	September 7, 2011
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	April 10, 2012
Registration Number	4219260
Registration Date	October 2, 2012
Owner	(REGISTRANT) KEVCO INTELLECTUAL PROPERTIES LLC LIMITED LIABILITY COMPANY UTAH 14513 S. CENTERPOINT WAY, SUITE 200 BLUFFDALE UTAH 84065
Assignment	ASSIGNMENT RECORDED

Recorded**Attorney of
Record** Richard L. Hill**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITION" APART FROM THE
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Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)